

**Remarks/Arguments**

Claims 1-25 are pending in this application. Of these, claims 1, 9 and 17 are independent claims.

In the Office Action, the Examiner rejected claims 17-25 as failing to comply with 35 USC 101. The basis of the Examiner's rejection is that the claims "could be considered by one of ordinary skill in the art as software per se, and therefore [do] not appear to be implemented in a machine readable medium". The Examiner is of the view that the "application must be implemented in a machine readable medium". The Applicant traverses this rejection. The claim as drafted is clearly directed to a machine-readable medium, which is well-established patentable subject matter. The mere recitation of an "application" in the claim does not necessarily require the application to be implemented "in a machine readable medium". Rather, all that is necessary is for the machine-readable medium to comprise machine-executable code that provides the described functionality. Accordingly, withdrawal of the rejection of claim 17, and of claims 18-25 depending therefrom, is requested.

The Examiner also rejected all of the claims under 35 U.S.C. 102(b) as anticipated by Palaniappan (U.S. Patent No. 6,711,557). This rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. 102(b) only if every element of the claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131 (citations omitted). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference.

MPEP § 2131 (citations omitted).

The Applicant submits that Palaniappan cannot anticipate any of claims 1-25 because each claim includes limitations that are not shown in that reference.

Claim 1 includes the following limitations: “in response to either of a new application being made available at a server or an updated version of an application being made available at a server, transmitting a message ... to a set of wireless communications devices indicating that said new or updated application is available [emphasis added].” In stark contrast, Palaniappan discloses essentially the opposite of these limitations, in that responsibility for determining whether a new or updated application is available is given to the client machine. Specifically, a background process 70 executing at the client machine periodically “wakes up” and initiates contact with a server machine to request meta-information regarding participating applications (see col:lines 3:52-54 and 3:59-62). Accordingly, even if it could be said Palaniappan discloses transmission of a message to a set of wireless communications devices indicating that a new or updated application is available (which is not admitted), any such transmission is not in response to a new or updated application being made available at a server, but rather is in response to a client machine’s contact with the server machine.

Accordingly, because the above-described limitations of claim 1 are not shown in Palaniappan, it is submitted that claim 1 cannot be anticipated by Palaniappan. The Applicant therefore respectfully requests withdrawal of the rejection of claim 1.

Claims 9 and 17 are server and machine-readable medium claims (respectively)

corresponding to method claim 1 which were rejected on the same grounds as claim 1. The Applicant's arguments regarding claim 1 are equally applicable to these claims. Accordingly, the Applicant respectfully requests that the rejections of claims 9 and 17 also be withdrawn, for the same reasons.

Given that the independent claims distinguish over the cited art, the remaining claims, which depend from the independent claims, also distinguish over the art of record.

In view of the foregoing, favorable reconsideration and allowance of the application are earnestly solicited.

Respectfully submitted,



---

Peter Elyjiw  
Registration No. 58,893

**SMART & BIGGAR**  
438 University Avenue  
Suite 1500, Box 111  
Toronto, Ontario  
Canada M5G 2K8

Telephone: (416) 593-5514  
Facsimile: (416) 591-1690

Date: June 26, 2008  
PAE/jbs 93422-48